

**COMMONWEALTH OF KENTUCKY  
BOARD OF TAX APPEALS  
File No. K05-R-34**

**ROHM AND HAAS COMPANY  
ROHM AND HAAS KENTUCKY, INC.**

**APPELLANTS**

**v.**

**ORDER NO. K-19757**

**COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE**

**APPELLEE**

This matter came on for hearing before the full board on November 15, 2006. The Appellant presented testimony of witnesses and supporting documents as evidence. At the conclusion of that proof it was announced by the board that the Appellant had not met its burden of proof. Upon that hearing the board offers the following findings of fact, conclusions of law and final order.

**FINDINGS OF FACT**

Rohm and Haas is a multinational manufacturing business and during the tax years in question operated a manufacturing facility in Louisville Kentucky. At the Louisville site Rohm and Haas manufactured several products.

From raw, undistilled Methyl Methacrylate (MMA) Rohm and Haas produced distilled MMA which it used primarily (at least 95%) on site in the production of other products, plexiglas, plastic additives manufacturing, Acryloid Coatings manufacturing and emulsion manufacturing. Distilled MMA is approximately a 50% component of plexiglas and about a 30% component of the plastics additives, 8% of the Acryloid

Coatings manufacturing and 7% of the Emulsions manufacturing, all products produced at that site. About 5% of the distilled MMA produced at the Louisville site was sold on the open market.

Rohm and Haas is seeking a refund of taxes paid on energy consumed in the manufacturing of plexiglas and emulsions. Its refund claim rests upon the application of KRS 139.480 which creates a sales and use tax exemption for energy or energy producing fuels used in the course of manufacturing and refining which exceed 3% of the “cost of production”. Rohm and Haas claims this exemption based upon the application of the exemption statute as found in a decision of the Kentucky Supreme Court. ***Revenue Cabinet, Commonwealth of Kentucky vs. James B. Beam, Distilling Company***, KY, 798 S.W. 2d 134 (1990). (Herein after The Beam Case)

The Revenue Cabinet has disallowed this exemption based upon a different reading of The Beam Case.

Rohm and Haas urges that it has separated out the “distinct” operations at its Louisville site into several businesses, each with its own accounting departments and separate chain of command. By virtue of these “separations” Rohm and Haas suggests that it has created “separate and complete” operations and is thus entitled to a sales and use tax credit on the energy used in the Plexiglas and Emulsions manufacturing businesses because the cost of that energy exceeds 3% of the “cost of production” in those operations.

However, in making this calculation Rohm and Haas does not believe that it should account for the “cost” of the distilled MMA which is an integral raw material used in making these two products.

Revenue urges that the cost of creating the distilled MMA needs to be allocated among the various operations in order to calculate the “cost of production” of the plexiglas, and emulsions.

Glenn Radomicki testified on behalf of Rohm and Haas that the cost of the distilled MMA is included in his accounting when it comes to calculating the “profit” of these two operations, but that it is excluded when calculating the “cost of production” for the purposes of seeking a tax exemption under KRS 139.480.

### CONCLUSIONS OF LAW

It is the Appellant’s burden of proof to demonstrate that the final ruling is in error. The Appellant here placed great reliance upon The Beam Case to establish that the Revenue Cabinet wrongfully denied it the sales and use tax refund it had claimed.

In The Beam Case, the distillery sought a sales and use tax exemption for the fuels used in distilling alcohol. Revenue argued that the exemption should be denied because Beam did not include in the “cost of production” of the alcohol the cost of warehousing and bottling. But Beam claimed the exemption for the distillery alone. In that context the cost of bottling or warehousing was not considered by the Court to be part of the “cost of production” of the distilled spirits.

The Court held

“[A] taxpayer which can demonstrate that the operation for which the exemption is claimed is a truly separate and complete operation, **not dependent on the other operations at that site for production of a completed product or process**, need not include the costs of the other unrelated operations in its costs of production for that one operation.” *Id.* at 135 (emphasis added)

Rohm and Haas argues that the manufacturing of plexiglas and emulsions are

“separate and complete” operations because they are on different parts of the site, use separate chains of command and are managed as separate accounts. However proof that the manufacturing of plexiglas and emulsions are “separate and complete” operations is not enough to bring these facts within the coverage of The Beam Case.

Not only must the operations for which the exemption is claimed be “separate and complete” but they must also be “not dependent on other operations at that site for the production of a completed product or process.” *Id.*

Here the facts offered by the Appellant clearly demonstrated that the manufacturing of Plexiglas and emulsions in fact depended upon the MMA distilled at that site.

Appellant misconstrues The Beam Case. There the taxpayer was not trying seeking an exemption from sales and use tax on energy consumed in processes down the line from the distillation process such as warehousing and bottling, but only sought the exemption for the energy consumed in distilling the alcohol in the first place. Here the Appellant is seeking the exemption NOT for the distillation of the MMA, but for other processes down the line, conducted on the same site and which are dependent upon the distilled MMA being produced at that site for completion.

The position of the Cabinet which requires the calculation of the “cost of production” for the manufacturing of Plexiglas and emulsions to include the cost of MMA used in those processes is more consistent with The Beam Case than the position urged by the Appellant.

At the conclusion of its proof it became apparent that Rohm and Haas had failed to meet its burden of proof.

## **FINAL ORDER**

The **FINAL RULING** of the Finance and Administration Cabinet Department of Revenue Number 2005-63 is affirmed.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER**  
**AND MAILING: February 13, 2007**

**KENTUCKY BOARD OF TAX APPEALS**  
**FULL BOARD CONCURRING**

**NANCY MITCHELL**  
**CHAIR**